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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 116

THE PENNSYLVANIA RAILROAD COMPANY,
Petitioner,

vs.

PIERRE MISTROT.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

FREDERIC D. McKENNEY,
JOHN S. FLANNERY,
G. BOWDOIN CRAIGHILL,
R. AUBREY BOGLEY,
WILLIAM F. ZEARFAUS,
E. B. DUBUISSON,
EDWARD DUBUISSON,
Counsel for Petitioner.

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STATUTES CITED.

Interstate Commerce Act, 49 U. S. C. A., Sections 1, 2, 6, and 20 (11) 6
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THE PENNSYLVANIA RAILROAD COMPANY,

vs.

PIERRE MISTROT.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT.

Petitioner, The Pennsylvania Railroad Company, respectfully prays for a writ of certiorari to the Court of Appeal of Louisiana, First Circuit, to review the judgment entered therein on December 12, 1940, a petition for a writ of certiorari to that Court having been denied by the Supreme Court of the State of Louisiana on March 3, 1941.

Summary Statement.

This is an action by a common carrier to recover from the respondent (the consignor-defendant below) its lawful freight charges for the transportation of two consignments of cabbage from Arnaudville, Louisiana, to Pittsburgh, Pennsylvania, upon bills of lading issued April 28, 1934, in

which P. G. Sackenreuther was named as consignee, and which contained the following, among other conditions:

> "7. * * * The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor * * * shall not be liable for such charges, * * *"

On the face of the bills of lading was printed:

> "Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
>
> "The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges." (R. 24A-24D.)

The respondent (consignor-defendant) did not sign this latter statement (R. 24A-24D).

Upon instructions received from said consignee that the shipments be delivered to Tom Ayoob Company upon payment of the freight charges, petitioner made delivery to said nominee of the consignee and received two checks in payment of the freight charges, aggregating $571.53, both of which were dishonored (R. 1-13).

No payment on account of said freight charges having been made, petitioner instituted suit against the respondent-consignor in the Twenty-seventh Judicial District Court, St. Landry Parish, Louisiana, on October 26, 1936 (R. 1-4), and at the trial submitted its case on the pleadings (R. 15). Respondent (defendant below) averred and gave evidence tending to prove that the owner of the cabbage was said

P. G. Sackenreuther, to whom he had sold it; that he shipped it upon Sackenreuther's instructions and that the agent of the initial carrier knew these facts (R. 11-15, 18-22).

The Court rendered judgment for the respondent September 28, 1940 (R. 25-35). On appeal to the Court of Appeal of Louisiana, First Circuit, this judgment was affirmed December 12, 1940 (R. 38-44). Application for a rehearing was denied January 14, 1941 (R. 44), and petition for a writ of certiorari was denied by the Supreme Court of the State of Louisiana on March 3, 1941 (R. 45).

Question Presented.

This case involves the obligations, rights and duties of the consignor and common carrier of interstate shipments of goods under contracts of shipment which required the respondent (consignor), although known not to be the owner of the goods, to pay the lawful established charges for the transportation thereof in the absence of a signed stipulation upon the bills of lading requiring collection from the consignee before delivery.

Reason for Allowance of the Writ.

The case raises an important question of Federal Law governing interstate commerce affecting shippers and carriers throughout the country and the application and interpretation of the provisions of the uniform bill of lading approved by the Interstate Commerce Commission, which the Courts of Louisiana have misconceived and misapplied in their attempted construction of the leading case of *Louisville & Nashville Railroad Co.* v. *Central Iron & Coal Co.*, 265 U. S. 59-70, 68 L. Ed. 900, which involved a different form of bill of lading. The effect of the decisions complained of is to relieve the consignor who was initially and primarily responsible for the lawful freight charges from

his contractual obligation and to prevent the carrier from performing its duty under the Interstate Commerce Act as established by the decisions of this Honorable Court.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the Court of Appeal, First Circuit, of the State of Louisiana, and that the judgment of that Court may be reversed and your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

THE PENNSYLVANIA RAILROAD COMPANY,
By FREDERIC D. MCKENNEY,
JOHN S. FLANNERY,
G. BOWDOIN CRAIGHILL,
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